

## V. Regulatory Impact and Notices

### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory impact analysis addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at <http://dms.dot.gov>.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of this final rule. The analysis also contains qualitative discussions of benefits that were not quantified. Over a 20-year period, the Present Value (PV) of the estimated costs is \$476,000, and the PV of the estimated benefits is \$612,000.

The major costs anticipated from adopting this final rule include those incurred in complying with additional OSHA-conformity reporting requirements, such as the covered data cases. Additional reporting burdens on railroads will also occur from an increase in telephonic reporting, an increase in reporting of occupational hearing loss cases, and from the recording of claimed occupational illnesses cases. Finally, there are costs associated with the familiarization of the railroad reporting officers with the revised Guide, and for revisions to FRA and railroad electronic reporting systems and databases.

The major benefits anticipated from implementing this final rule include savings from a simplification in the reporting of occupational injuries due to a new definition of "first aid." This benefit will produce a savings in the decision making process for both reportable injuries and accountable injuries. Additional savings will also occur from a reduction in the average burden time to complete a Rail

Equipment Accident/Incident Report. This savings is largely a product of a revision to the train accident cause codes. The revised casualty circumstance codes will produce a savings from a reduction in the use of the narrative block on the railroad injury and illness reports.

Finally, railroads will receive a savings from a simplification in the counting of the number of days away from work or of restricted work activity. This includes a savings due to a reduction from 365 to 180 days for the maximum number of days that the railroads would have to track and report injuries and illnesses. FRA also anticipates that there will be qualitative benefits from this rulemaking from better data on railroad reports, and the increased utility that the additional data codes would provide to future analysis.

#### B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612) requires a Federal agency to review its proposed and final rules in order to assess their impact on small entities (small businesses, small organizations, and local governments). If the agency determines that its final rule would have a significant economic impact on a substantial number of small entities, then the agency must prepare an Regulatory Flexibility Analysis (RFA). If the agency determines the opposite, then the agency must certify that determination; an RFA may also provide the basis for the agency's determination that the final rule would not have a significant economic impact on a substantial number of small entities.

``Small entity" is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The Small Business Administration (SBA) stipulates in its ``Size Standards" that the largest a railroad business firm that is ``for-profit" may be, and still be classified as a ``small entity" is 1,500 employees for ``Line-Haul Operating" Railroads, and 500 employees for ``Switching and Terminal Establishments." SBA's ``size standards" may be altered by Federal agencies on consultation with SBA and in conjunction with public comment. Pursuant to section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), FRA has published an interim policy that formally establishes ``small entities" as being

railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024, Aug. 11, 1997. Currently, the revenue requirements are \$20 million or less in annual operating revenue. The \$20 million limit is based on the Surface Transportation Board's threshold for a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment. See 49 CFR part 1201. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposed to use this alternative definition of "small entity" for this rulemaking, and requested comments on its use. No comments were received related to this proposal.

Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," requires in part that a Federal agency notify the Chief Counsel for Advocacy of the SBA of any of its draft rules that would have a significant economic impact on a substantial number of small entities. This Executive Order also requires Federal agencies to consider any comments provided by the SBA, and to include in the preamble to the final rule the agency's response to any written comments by the SBA unless the agency head certifies that including such material would not serve the public interest. 67 FR 53461 (Aug. 16, 2002). Since this final rule does not have a significant economic impact on a substantial number of small entities, FRA has not notified the Office of Advocacy at SBA, and therefore, has not received any comments from Advocacy.

In accordance with the Regulatory Flexibility Act of 1980, FRA has prepared and placed in the docket an RFA, which assesses the small entity impact of this final rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at <http://dms.dot.gov>.

As stated in the RFA, FRA has determined that there are over 650 small railroads that could potentially be affected by this rulemaking; however, the frequency of accidents/incidents, and therefore reporting

burden, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller, all other things being equal. For example, in 1998, only 327 railroads reported one or more casualties.

The economic impacts anticipated from final rule are primarily a result of an increase in casualty reporting due to the reporting of some casualties, due to OSHA recordkeeping requirements which this rulemaking is adopting into FRA reporting requirements. In addition, the railroad industry will incur small burdens for an increase in telephonic reporting of some accident/incidents, and for modifications made to computer software and databases. However, FRA does not anticipate that any of these burdens will be imposed on small entities due to the decreased likelihood of a casualty occurring on a small railroad. The computer-based burdens are not expected to impact small entities either since most small railroads report using personal computer (PC)-based software provided by FRA. It is estimated by FRA that small entities will incur five percent or less of the total costs for this final rule.

It is important to note that this final rule will also reduce recordkeeping burdens by simplifying the method used to count employee absences and work restrictions, and by reducing the requirement to keep track of lengthy employee absences. The final rule also simplifies reporting requirements with clarifying definitions for things such as ``medical treatment" and ``first aid." Train accident cause codes and injury occurrence codes would be added, so that accident and injury data would be more precise and the need for some narratives will be eliminated.

This final rule does not provide alternative treatment for small entities in the regulation or reporting requirements. However, small railroads that report using PC-based software will not be burdened with any costs for modifying or changing the software, since FRA provides this software free to all railroads that utilize it. It is important to

note that just by the fact that small railroads report fewer accidents/incidents and casualties, they are less likely to be burdened by the final rule.

The RFA concludes that this final rule will not have a significant economic impact on a substantial number of small entities; therefore, FRA certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities. For the same reason, consistent with Executive Order 13272, the draft rule has not been submitted to the SBA. In order to determine the significance of the economic impact for this RFA, FRA invited comments from all interested parties concerning the potential economic impact on small entities in the notice of proposed rulemaking. The Agency considered the lack of comments and data it received in making this decision and certification.

#### C. Paperwork Reduction Act of 1995

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section--49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.9--Telephone Reports-- Certain Accidents/Incidents and Other Events.	685 railroads.....	500 reports.....	15 minutes.....	125	\$5,250
225.11--Reporting of Rail Equipment Accidents/Incidents (Form FRA F 6180.54).	685 railroads.....	3,000 forms.....	2 hours.....	6,000	252,000
225.12(a)--Rail Equipment Accident/Incident Reports-- Human Factor (Form FRA F 6180.81).	685 railroads.....	1,000 forms.....	15 minutes.....	250	10,500
225.12(b)--Rail Equipment Accident/Incident Reports-- Human Factors (Part 1, Form FRA F 6180.78).	685 railroads.....	4,100 notices/ copies.	10 minutes and 3 minutes.	372	15,624
225.12(c)--Rail Equipment Accident/Incident Reports-- Human Factor--Joint Operations.	685 railroads.....	100 requests.....	20 minutes.....	33	1,386
225.12(d)--Rail Equipment Accident/Incident Reports-- Human Factor--Late Identification.	685 railroads.....	20 attachments + 20 notices.	15 minutes.....	10	420
225.12(e)--Rail Equipment Accident/Incident Reports-- Human Factor--Employee Supplement (Part II, Form FRA F 6180.78).	685 railroads.....	75 statements.....	1.5 hours.....	113	2,938
225.12(f)--Rail Equipment Accident/Incident Reports-- Human Factor--Employee Confidential Letter.	Railroad Employees	10 letters.....	2 hours.....	20	520
225.13--Amended Rail Equipment Accident/Incident Reports.	685 railroads.....	10 amended reports, 20 copies.	1 hour + 3 minutes.	11	462

225.17--Doubtful Cases; Alcohol/ Drug Involvement.	685 railroads.....	80 reports.....	30 minutes.....	40	1,680
--Appended Reports.....	685 railroads.....	5 reports.....	30 minutes.....	3	126
225.19--Highway--Rail Grade Crossing Accident\Incident Reports (Form FRA F 6180.57).	685 railroads.....	3,400 forms.....	2 hours.....	6,800	285,600
--Death, Injury, or Occupational Illness (Form FRA F 6180.55a).	685 railroads.....	13,800 forms.....	20 minutes.....	4,400	184,800
225.21 Forms:					
--Form FRA F 6180.55--Railroad Injury\Illness Summary.	685 railroads.....	8,220 forms.....	10 minutes.....	1,370	57,540
--Form FRA F 6180.56--Annual Report of Employee Hours and Casualties by State.	685 railroads.....	685 forms.....	15 minutes.....	171	7,182
--Form FRA F 6180.98--RR Employee Injury and/or Illness Record.	685 railroads.....	18,000 forms.....	1 hour.....	18,000	756,000
--Form FRA F 6180.98--Copies.	685 railroads.....	540 copies.....	2 minutes.....	18	756
--Form FRA F 6180.97--Initial Rail Equipment Accident/Incident Record.	685 railroads.....	13,000 forms.....	30 minutes.....	6,500	273,000
--Form FRA F 6180.107--Alternate Record For Illnesses Claimed to Be Work Related.	685 railroads.....	300 forms.....	15 minutes.....	75	3,150
225.25--Posting of Monthly Summary.	685 railroads.....	8,220 lists.....	16 minutes.....	2,192	92,064
225.27--Retention of Records...	685 railroads.....	1,900 records.....	2 minutes.....	63	2,646
225.33--Internal Control Plans--Amended.	685 railroads.....	25 amendments.	14 hours.....	350	14,700
225.35--Access to Records and Reports--Lists.	15 railroads.....	400 lists.....	20 minutes.....	133	5,586
--Subsequent Years.....	4 railroads.....	16 lists.....	20 minutes.....	5	210
225.37--Magnetic Media Transfers.	8 railroads.....	96 transfers.....	10 minutes.....	16	672
--Batch Control (Form FRA F 6180.99).	685 railroads.....	200 forms.....	3 minutes.....	10	420

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All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, 725 17th St., NW., Washington, DC 20503. OMB is required to make a decision concerning the information collection requirements contained in this final rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

#### D. Federalism Implications

Executive Order 13132, entitled, "Federalism," issued on August 4, 1999, requires that each agency "in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provide to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met \* \* \*."

When issuing the proposed rule and final rule in this proceeding, FRA has adhered to Executive Order 13132. FRA engaged in the required Federalism consultation during the early stages of the rulemaking through meetings of the full RSAC, on which several representatives of groups representing State and local officials sit. To date, FRA has received only one concern about the Federalism implications of this



rulemaking from these representatives, regarding whether or not FRA's notification requirements would preempt State accident notification requirements. Although FRA's regulations under part 225 preempt States from prescribing accident/incident reporting requirements, there is nothing in these regulations that preempts States from having their own, perhaps even different, accident notification requirements:

Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accident/incidents and injuries/illnesses which occur in that State.

49 CFR 225.1. FRA did not propose to change this provision that a State may require a railroad to submit to the State copies of reports required by part 225 regarding accidents in the State.

Additionally, section 20902 of title 49 of the United States Code, which authorizes the Secretary of Transportation to investigate certain accidents and incidents, provides: "[i]f the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation." This section contemplates that States have an interest in carrying out simultaneous investigations in coordination with the Secretary, where convenient. It would be consistent with this interest to permit States to adopt their own accident notification requirements so as to allow a prompt, and perhaps coordinated, investigation. Accordingly, FRA believes that it has satisfied the Executive Order.

#### E. Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring

the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. \* \*

\* The following classes of FRA actions are categorically excluded:

\* \* \* \* \*

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

#### F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency ``shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that ``before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was

published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The final rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of such a statement is not required.

#### G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) that is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.